IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 579 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

B R GOWSWAMI

Appearance:

1. Special Civil Application No. 579 of 1994

MR YOGESH S LAKHANI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 30/01/2002

ORAL JUDGEMENT

#. Heard Mr.Nishit Thakkar, learned advocate for Mr.Y.S.Lakhani, learned advocate appearing on behalf of the petitioner.

#. In the present petition, award passed by the Industrial Tribunal, Ahmedabad in Reference No.375 / 1988 dated 6th September, 1991 has been challenged by the petitioner Corporation. This Court, initially, has issued RULE and ad-interim relief in terms of para-12[C] has been granted by this Court vide order dated 25th January, 1994. It is necessary to note that though RULE has been served on the respondent, but he has not remained present nor the respondent has engaged any advocate in the present proceedings. Therefore, this matter is taken up in absence of the respondent workman. It is also necessary to note one more fact that the award impugned in this petition, was passed by the Industrial Tribunal on date 6th September, 1991 which is challenged by the petitioner Corporation after period of three years on 25th January, 1994 and this Court has granted ad-interim relief after period of three years. Therefore, it can be safely presumed that during the period of three years, the Corporation might have implemented the award in question. Learned advocate Mr.Thakkar makes a clear statement that he has no instruction whether the award in question was implemented or not.

#. Learned advocate Mr.Thakkar has submitted that the respondent workman was working as Driver and he met with an accident and one boy was expired. Therefore, the Corporation had issued chargesheet and after completing the department inquiry, the workman was dismissed from service on 21st August, 1984. Thereafter, the respondent workman had approached the departmental appellate authority and the appellate authority has reduced the penalty vide order dated 23rd September, 1985 granting reinstatement without backwages for interim period and stoppage of four increments with permanent effect. However, the respondent workman had challenged the order of the appellate authority dated 23rd September, 1985 by raising industrial dispute before the Industrial Tribunal which was referred for adjudication being Reference No.375 / 1988.

#. Learned advocate Mr.Nishit Thakkar has raised contention that the tribunal has not considered the admission which was given by the respondent workman that boy was dashed with the bus and come to the different conclusion contrary to the evidence. The Tribunal has also not appreciated the facts that after all accident had occurred and one boy expired and therefore, the respondent workman was negligent and therefore, the punishment awarded on the respondent workman was just and reasonable and in such circumstances, interference by the

tribunal is illegal and there is clear error committed by the tribunal while setting aside the order in question.

#. I have considered submissions made by the learned advocate Mr.Nishit Thakkar. The fact remains that the respondent workman had received chargesheet issued by the petitioner Corporation in respect of the accident in question. In departmental inquiry, only reporter was examined and no other eye witness was examinedc and even the reporter who was examined in the departmental inquiry was not eye witness. However, in the inquiry proceedings, the inquiry officer has considered the admission of the respondent workman to the effect that the respondent workman has admitted that boy had dashed with the bus in front portion and therefore, on that basis, the inquiry officer has come to the conclusion that chargesheet has been admitted by the respondent workman and the same is proved against the respondent workman. This question has been examined by the Tribunal in detail that the explanation which has been tendered by the respondent workman is required to be considered as a whole and not in a piecemeal manner. It is the finding of the tribunal that the inquiry officer had considered one or two lines of the statement of the respondent workman and that is not permissible, on the contrary, the respondent workman had explained whole situation how the boy dashed with the S.T. Bus. It is also observed that the respondent workman had specifically denied the charge in his statement and the driver workman had submitted that he is not guilty of the charge levelled against him nor he was negligent while driving the bus. The respondent driver workman had also stated in his statement that at the time of accident, the bus was not in high speed and there was bump. That after cross these bumps, the accident had occurred because of mistake of the boy who all of sudden attempted to cross the road. The tribunal has also appreciated one more aspect that in criminal case, the respondent workman was discharged and acquitted. The other aspect which considered by the tribunal that there was no evidence before the inquiry officer to prove negligence of the respondent workman. Except reporter, none has been examined and even the reporter was not the eye witness. Therefore, the tribunal has come to the conclusion that looking to the evidence led before the inquiry officer, charge which was levelled, was not found to have proved and therefore, punishment of dismissal as well as the subsequent modified punishment has been quashed and set aside.

#. However, in similar facts and circumstances, the view taken by this Court is much relevant to the present case

and therefore the relevant observations of this Court in case of GUJARAT STATE ROAD TRANSPORT CORPORATION , AHMEDABAD V. RUPSINH VEGHJI RATHOD reported in 1985 LAB.I.C. 1095. The relevant observations in para 5 to 8 made by this Court, are quoted as under :-

"5. The answer is furnished by the judgment of this Court in Abdul Hakim Ahmed v. District Supdt. of Police, reported in 14 Guj LT 104 [M.P.Thakkar, J. as he then was] in LPA No.43/78 against the said judgment was summarily dismissed by the Division Bench on 20th Feb., 1978. Thus the High Court has laid down that a departmental proceeding can not be initiated as a matter of course or without anything more when a court of law has acquitted the delinquent of the same charge and such disciplinary proceedings can be undertaken only if special circumstances are shown to exist. Some illustrative situations have also been indicated where the acquittal is based on want of requisite sanction; or the prosecution witnesses not remaining present; or charge being defective or when the benefit of doubt is given; when the case is of circumstantial evidence; where some of the witnesses have been believed and others are not believed and because of conflict of evidence benefit of doubt in given. But when the criminal court has appreciated and disbelieved the evidence same evidence cannot be believed by the disciplinary authority and it is not open to the disciplinary authority to take a contrary view.

6. In the present case, there is a clear acquittal on merits after appreciating the evidence and examining eye witnesses and, therefore, the disciplinary proceedings could not have continued at all and, therefore, the lower courts were justified in holding against the appellant Corporation.

7. Even in the departmental inquiry, no eye witnesses are examined and it is surprising that without any evidence of negligence, the authority came to the conclusion of negligence. Such finding is without any evidence and, therefore, also the order of dismissal cannot stand for a moment.

8. The learned counsel for the appellant made grievance that the Road Transport

> Corporation is faced with a very peculiar and anomalous situation. Their driver is acquitted by the criminal court, they cannot proceed to hold a departmental inquiry and to hold that he was negligent. At the same time when the Corporation has to meet the case in a Motor Accident Claims Tribunal inspite of the judgment of acquittal by the criminal court the Tribunal not only comes to its own independent finding but comes to a contrary findings. Thus, the Corporation is faced with the finding of the criminal court that the driver is not negligent and finding by the Claims Tribunal that the driver is negligent and yet the Corporation would not be in a position to take any proceedings against the driver. If the finding of the Criminal court that the driver is not negligent is to have a binding effect on the Corporation similar effect has to be given to the finding of negligence given by the Motor Accident Claims Tribunal; otherwise; inconsistence and anomalous situation would expose the legal system to unexplainable and anomalous situation. In the present case no such situation arises because no finding of the Tribunal is referred to anywhere by either party and, therefore, that question does not arise at all in the present appeal."

#. Considering the observations made by this Court in above referred case and looking to the facts which are not in dispute before the Tribunal, according to my opinion, there is no error committed by the Tribunal while allowing the Reference and passing the award in question dated 6th September, 1991. As such, there is no jurisdictional error committed by the Tribunal nor any procedural irregularity committed by the Tribunal which requires any interference by this Court while exercising the powers under Article 226 and 227 of the Constitution of India. It is also necessary to note that award in question dated 6th Septebmer, 1991 and challenge was made on 25th January, 1994. No doubt, after admission of this matter, at this stage of final hearing, this matter cannot be rejected only on the ground of delay but the best course to examine the merits of the matter with a view to see that the matter can be disposed of finally on merits. Therefore, this is one more ground to dismiss the present petition that this petition has been filed after period of three years challenging the award dated 6th September, 1991. The entire award impugned before this Court is read. However, as such, no satisfactory explanation given by the petitioner Corporation for

challenging the award in question after period of three years. It is also noted that this Court has put very pertinent question to learned advocate Mr.Nishit Thakkar whether any explanation has been give by the petitioner Corporation for challenging the award after three years. But Mr.Thakkar has failed to point out any averments from the petition.

#. Therefore, considering the totality of the facts and circumstances and reasonings given by the Tribunal, it has clearly come on record that there was no evidence in departmental inquiry and moreover, considering acquittal of the respondent workman before the criminal court, on the basis of the same charge, in view of this Court, the tribunal has rightly exercised the powers by setting aside the order in question and the tribunal has given cogent reasons to set aside the order in question. The Tribunal has not committed any error which requires interference of this Court in any manner while exercising the powers under Article 226 and 227 of the Constitution. Therefore, this petition deserves rejection and the same is rejected accordingly. Rule discharged. Ad-interim relief, if any, stands vacated. No order as to costs.

Date : 30-1-2002 [H.K.Rathod, J.]

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